



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CEPR-P (715)

05 FEB 1999

MEMORANDUM FOR COMMANDERS, ALL MAJOR SUBORDINATE COMMANDS,
DISTRICT COMMANDS, FIELD OPERATING ACTIVITIES AND
LABORATORIES; ATTN: DIRECTORS/CHIEFS OF
CONTRACTING

SUBJECT: PARC (Principal Assistant Responsible for Contracting) Instruction Letter 99-4, Use of EFARS
Contract Funding Clauses

1. References:

- a. EFARS 32.7 – Contract Funding.
- b. EFARS 52.232-5001 – Continuing Contracts (MAR 1995).
- c. EFARS 52.232-5002 – Continuing Contracts (Alternate) (MAR 1995).

2. Due to the inconsistent usage of the EFARS's clauses referenced in 1.b. and c. above, the following clarification and guidance, in coordination with the Directorate of Civil Works (Construction Branch and Programs Management Division), is provided for use with civil works contracts. Reference 1.a. is the regulation that authorizes and prescribes the use of the two clauses.

3. There are two types of projects for which Continuing Contracts may be used. Following is each type with the required clause to be used:

a. Civil Works contracts for **projects that have been specifically authorized by Congress** and have a portion of the contract price dependent upon reservation of funds from future appropriations, known as "Continuing Contracts"; EFARS Clause **52.232-5001, CONTINUING CONTRACTS (MAR 1995), shall be used for these types of contracts.**

b. Civil works contracts that are incrementally funded when **no contracting authority exists** to obligate the entire contract price in advance of appropriations. These are **continuing authorities** projects for which the Secretary of the Army, acting through the Chief of Engineers, is authorized to plan, design, and construct certain types of water resources improvements **without specific Congressional authorization**. These projects comprise the Continuing Authorities Program when referred to as a group and are set forth in ER 1105-2-100, Chapter 3, 28 December 1990, EC 1105-2-214, 30 November 1997, and EC 1105-2-209, 31 August 1995; EFARS Clause **52.232-5002, CONTINUING CONTRACTS (ALTERNATE) (MAR 1995), shall be used for the Continuing Authorities program.**

4. The amount to be inserted in the blank in subparagraph (b) of EFARS Clause 52.232-5001 and the blank in subparagraph (a) of EFARS Clause 52.232-5002 shall be an amount of funds reserved for the contractor

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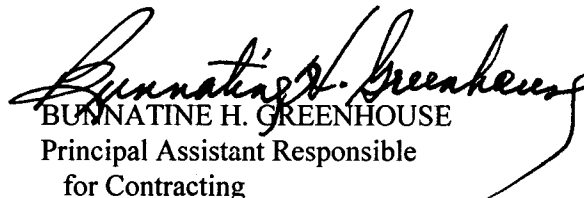
that will permit him to commence and prosecute the work in accordance with the contract and the guidelines noted in paragraph 5.

5. For each fiscal year, during the life of a continuing contract, each district will receive a work allowance for each of its projects and determine the amount to be allocated to each on-going contract. The Project Manager shall compare this amount with the amount needed by the contractor to fully execute the approved schedule, with consideration for anticipated performance or dependability of performance to date. If the amounts agree, a letter to the contractor will be prepared by the Contracting Officer, in coordination with the Project Manager, informing him of the anticipated amount that will be reserved for the contract for the fiscal year. If the amounts do not agree, the Project Manager shall confer with the Program Review Board (PRB) to point out impacts and reconcile the differences. Once reconciliation is made, a letter to the contractor will be prepared by the Contracting Officer, in coordination with the Project Manager, informing him of the anticipated amount that will be reserved for the fiscal year. The letter shall emphasize that this reserved amount is anticipated to be made available to the contractor during the fiscal year; however, a modification to the contract will be forthcoming in the amount to be reserved, and this amount could be different from the anticipated amount. Additionally, the letter shall inform the contractor that in those instances wherein the amount reserved will be exhausted before the end of the fiscal year, the contractor should give the notices required by either EFARS Clause 52.232-50001(e) or 52.232-5002(d) (reference the specific clause that is in the contract).

6. The Contracting Officer, in consultation with the Project Manager, will determine the actual amount to be reserved on the contract, either in a lump sum for the fiscal year or a piecemeal amount, and an administrative modification shall be prepared in that amount. If the amount is piecemeal, additional modifications will be required in a timely fashion throughout the fiscal year. Block D. of the SF 30 will be marked, annotate that this is an administrative modification, and the authority will be the appropriate EFARS "Continuing Contract" clause contained within the contract. Nevertheless, only funds that will be expended in the current fiscal year should be reserved to each continuing contract. Requirements for additional funds, which develop during the fiscal year, have to be met by reprogramming funds from other projects. Reserved funds that cannot be expended in the current fiscal year will only exacerbate the problem of finding sources of funds for reprogramming actions.

7. Our point of contact for this action is Mr. Roger Adams, (202) 761-5221.

FOR THE COMMANDER:


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for Contracting